

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Policy and Rules Concerning the ) CC Docket No. 96-61  
Interstate, Interexchange Marketplace )  
 )  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )

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**REPLY COMMENTS OF LDDS WORLDCOM**

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## SUMMARY

Many parties filing comments in this proceeding join LDDS WorldCom in supporting the Commission's exercise of its forbearance authority to alter the Section 203 tariffing requirement so that nondominant carriers may choose not to file tariffs for their domestic interstate, interexchange services. Commenters discuss the many public interest benefits of such a "permissive detariffing" policy, including maximizing carrier and customer flexibility, minimizing carrier-to-customer transaction costs, offering carriers and customers necessary legal protection, and allowing the use of uniform and standard terms and conditions. Parties also point out that there are few, if any, actual costs of adopting a permissive detariffing policy.

While the vast majority of parties favor either allowing or requiring carriers to file tariffs with the Commission, only seven commenters -- out of a total of nearly eighty -- support a blanket "mandatory detariffing" policy. All other parties stringently oppose mandatory detariffing, and provide many significant reasons why it should not be adopted as Commission policy. First and foremost, the plain language of the 1996 Act only authorizes permissive forbearance, not mandatory forbearance. Second, mandatory forbearance is not required, or even permitted, under the new statute's three-part forbearance test. In particular, parties show that adopting a mandatory detariffing policy would be against the public interest because consumers and carriers alike would be harmed, without any concomitant benefits.

Commenters highlight many significant costs of a mandatory forbearance policy which supporters do not take into account. First, so-called "casual callers," who utilize access codes, collect calling, and credit cards to reach a long distance carrier, must rely exclusively on tariffs to govern the rates, terms, and conditions of service. Second, without tariffs, it is a

virtual impossibility for a long distance carrier and every one of its customers to attempt to establish a contractual relationship; this is especially the case for residential and small business customers. Third, commenters point to a number of serious legal, financial, and practical hardships that will be created for customers and carriers under a mandatory detariffing regime. Fourth, without the ability to file tariffs, it will be far more difficult for carriers to enforce Commission policies. Finally, some parties criticize the lack of public pricing information if no tariffs are on file with the Commission.

The few parties favoring a mandatory detariffing policy offer no public interest benefits to weigh against its significant costs. Some commenters claim that mandatory detariffing will reduce or eliminate the possibility of "tacit price coordination" by the IXC's, but numerous commenters dispute the notion that there is any price collusion in the long distance market, or that the forced elimination of tariffs would do anything to solve that "problem." The purported "burden" of filing tariffs, both for IXC's and for the FCC, is also greatly overstated. Carriers are in the best position to determine whether any burdens or costs of employing a tariff outweigh those of a contract, while the Commission's present role in receiving and reviewing tariffs can be greatly reduced without forbidding tariffs altogether. Finally, some commenters state that a mandatory detariffing policy is necessary to eliminate potential application of the "filed rate doctrine." Yet, as LDDS WorldCom and several other commenters point out, a permissive detariffing policy will have the same effect because the underlying basis for applying the filed rate doctrine would be eliminated once the mandatory nature of filing tariffs is removed. The Commission also has authority to adopt procedures and substantive policies to mitigate any potentially negative impact of the filed rate doctrine.

Should the Commission ignore the overwhelming record evidence and decide to adopt a mandatory detariffing policy anyway, it will be important that the Commission allow a transition of up to two years so that the industry and end users can make the significant shift to a mandatory detariffing regime. Moreover, AT&T should not be required to continue filing tariffs if other carriers are ordered not to file tariffs.

A very few entities claim that the RBOCs should be allowed into the long distance market on an untariffed basis. However, the RBOCs' long distance services must be tariffed, regardless of the Commission's other decisions in this proceeding, so that regulators can monitor the RBOCs to ensure that they do not leverage their bottleneck control over local access and exchange markets into abusive behavior in the long distance market. The Commission also needs to scrutinize RBOC tariffs to make sure that the RBOCs are fully complying with all aspects of the 1996 Act.

Most commenters support the Commission's tentative conclusion to allow nondominant carriers to bundle their long distance services with customer premises equipment, given the highly competitive nature of both markets. Commenters also agree that the Commission should retain a requirement that carriers offer on a separate, unbundled basis, the service that is being bundled with the CPE. Public disclosure of the common carrier interfaces also should be required to prevent the development of proprietary common carrier transmission systems. A short transition period would be appropriate to allow time for the market to adjust to the new bundling regime. Finally, because the RBOCs possess market power in the local market, any authority to bundle telecommunications services and CPE should not include the dominant RBOCs, or their future in-region interLATA services.

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**REPLY COMMENTS OF LDDS WORLDCOM**

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to initial comments submitted concerning Sections III, VII, VIII, and IX of the Notice of Proposed Rulemaking ("Notice"), FCC 96-123, released by the Commission on March 25, 1996 in the above-referenced proceeding.

**I. INTRODUCTION**

A sizable number of initial comments filed in the second phase of this proceeding, including those of LDDS WorldCom, endorse the Commission's exercise of its statutory forbearance authority under the Telecommunications Act of 1996 to allow nondominant interexchange carriers ("IXCs") to not file federal tariffs for domestic, interstate, interexchange services. In contrast, only a small handful of commenters voice any support at all for the Commission's much more extreme tentative conclusion that its forbearance authority should extend to requiring nondominant IXCs to cease filing tariffs. Most commenters agree with the Commission's tentative conclusion to amend its rules to allow nondominant IXCs to bundle customer premises equipment ("CPE") and long distance services.

**II. WHILE MANY COMMENTERS SUPPORT A PERMISSIVE DETARIFFING POLICY, ALMOST ALL PARTIES STRONGLY OPPOSE THE COMMISSION'S TENTATIVE CONCLUSION TO IMPOSE A MANDATORY DETARIFFING POLICY ON NONDOMINANT INTEREXCHANGE CARRIERS**

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**A. Commenters Generally Support A Permissive Detariffing Policy**

Many parties filing comments in the second phase of this proceeding join LDDS WorldCom in lending strong support to the Commission's exercise of its forbearance authority to alter the ubiquitous Section 203 tariffing requirement so that nondominant carriers may choose not to file tariffs for their domestic interstate, interexchange services.<sup>1</sup> Commenters stress that this "permissive detariffing" policy is actually required by Section 10 of new Act.<sup>2</sup>

Commenters echo LDDS WorldCom's initial comments when they discuss the many public interest benefits of allowing carriers to file tariffs.<sup>3</sup> For example, permissive forbearance will allow IXC's to retain tariffs that: (1) maximize carrier and customer flexibility;<sup>4</sup> (2) minimize carrier-to-customer transaction costs;<sup>5</sup> (3) offer carriers and customers necessary

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<sup>1</sup> LDDS WorldCom Comments at 4-6; CompTel Comments at 4; AT&T Comments at 5; MCI Comments at 7; Sprint Comments at 7; LCI Comments at 2; Cable & Wireless Comments at 5; TRA Comments at 14; Frontier Comments at 4; Casual Calling Coalition Comments at 10; MFS Comments at 8; UTC Comments at 3; Eastern Tel Comments at 2; British Telecom Comments at 2; Ursus Comments at 3; Ameritech Comments at 2; NYNEX Comments at 2; PacTel Comments at 3; GTE Comments at 3-4; SCG Comments at 2-3; CSE Comments at 5.

<sup>2</sup> AT&T Comments at 5-7; GTE Comments at 3-4.

<sup>3</sup> LDDS WorldCom Comments at 4-6; see, e.g., CompTel Comments at 7-9; MCI Comments at 9-14; LCI Comments at 2-3; Eastern Telecom Comments at 3-6.

<sup>4</sup> Winstar Comments at 7-8; Eastern Tel Comments at 6-7.

<sup>5</sup> CompTel Comments at 10.

legal protection;<sup>6</sup> (4) are far less expensive and burdensome than individual contracts to create and maintain;<sup>7</sup> (5) allow the use of uniform and standard terms and conditions;<sup>8</sup> and (6) can be used efficiently to enforce many of the Commission's policies.<sup>9</sup> One commenter notes that permissive detariffing is in fact the most deregulatory policy choice available to the Commission "because it would allow private businesses, rather than government regulators, to determine how best to structure their offerings and compete in the marketplace."<sup>10</sup> Sprint also reminds the Commission of the great success of its prior policy of permissive detariffing.<sup>11</sup>

Parties favoring a permissive detariffing policy also point out that there are few, if any, actual costs of adopting such a policy. Under a "maximum streamlined regulation" approach for nondominant carriers, any administrative burdens that might otherwise attend the tariff filing process have largely been eliminated.<sup>12</sup> Moreover, the important point is that permissive forbearance allows a carrier to utilize individually-negotiated contracts where and when it seeks to avoid whatever tariffing costs it may not wish to incur.

At the same time, mandatory tariffing is no longer necessary. Some parties insist that the Commission should continue to require that all long distance companies file tariffs for

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<sup>6</sup> CompTel Comments at 9; Sprint Comments at 25-26; UTC Comments at 5-6; Ameritech Comments at 2-8.

<sup>7</sup> LCI Comments at 2-3; Ameritech Comments at 2-8.

<sup>8</sup> LCI Comments at 4-5; UTC Comments at 5-6.

<sup>9</sup> Sprint Comments at 10.

<sup>10</sup> PacTel Comments at 5-8.

<sup>11</sup> Sprint Comments at 7-10.

<sup>12</sup> CompTel Comments at 4-7; SCG Comments at 4-5; Alabama PSC Comments at 5.



all services,<sup>13</sup> or for all residential and small business services.<sup>14</sup> While it is likely that, under a permissive detariffing policy, many nondominant carriers would still choose to file tariffs for residential and small business services anyway, the FCC need no longer be actively involved in the process of receiving and reviewing tariffs for all services from all carriers. Tariffs, while highly useful in many situations, are not needed in the highly competitive long distance market to deter unjust prices, or to protect consumers in most situations.<sup>15</sup> Mandatory tariffing is simply wasteful, burdensome, and unnecessary where it is not required or desired by the carrier or its customers.<sup>16</sup>

In sum, permissive detariffing meets the statutory forbearance test because it gives carriers and customers the many benefits of tariffs, while mandating none of the costs. Thus, the Commission should exercise its authority under the statute to adopt a permissive detariffing policy for most nondominant IXC's.

#### **B. Only A Few Commenters Support A Mandatory Detariffing Policy**

While the vast majority of parties favor either allowing or requiring carriers to file some form of public tariff with the Commission, only a small handful of commenters actually support adopting a mandatory detariffing policy. In fact, by LDDS WorldCom's count,

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<sup>13</sup> TRA Comments at 6; Casual Calling Coalition Comments at 5; Missouri PSC Comments at 2-3; Alaska Comments at 2; Tennessee Comments at 3; CFA Comments at 2-3.

<sup>14</sup> GCI Comments at 2-5.

<sup>15</sup> UTC Comments at 3-5.

<sup>16</sup> CSE Comments at 4.

only seven commenters -- out of a total of nearly eighty -- support a blanket mandatory detariffing policy.<sup>17</sup> One other commenter suggests mandatory detariffing only for business customers.<sup>18</sup> All other parties stringently oppose adoption of a mandatory detariffing policy. It is obvious that, based on sheer numbers alone, the record does not support adoption of the Commission's proposed mandatory detariffing policy.

Overwhelming numbers in opposition are not all that weigh against mandatory detariffing. Commenters provide many significant reasons why it should not be adopted as Commission policy. First and foremost, numerous commenters agree with LDDS WorldCom that the plain language of Section 10 of the 1996 Act only authorizes permissive forbearance, not mandatory forbearance.<sup>19</sup> In fact, as CompTel puts it, the Commission's proposal is not forbearance at all because it "would constitute a new regulation that imposes upon IXCs an obligation to which they are not now subject -- the obligation to terminate their existing tariffs and to replace them with individually negotiated contracts."<sup>20</sup> A number of parties also join LDDS WorldCom in directing the Commission to the precise dictionary definition of

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<sup>17</sup> BellSouth Comments at 1; Bell Atlantic Comments at 2; SBC Comments at 6; Florida PSC Comments at 2-3; Ad Hoc Telecommunications Users Committee Comments at 4; Cato Institute Comments at 2; API Comments at 3.

<sup>18</sup> Networks Comments at 3.

<sup>19</sup> LDDS WorldCom Comments at 6-8; CompTel Comments at 19-22; AT&T Comments at 7-12; Sprint Comments at 3; MFS Comments at 2-5; Casual Calling Coalition Comments at 12-13; Eastern Tel Comments at 2-3; GTE Comments at 4-7; Winstar Comments at 3-4; SCG Comments at 2-3.

<sup>20</sup> CompTel Comments at 20.

"forbearance," and how it denotes refraining from acting, rather than forcing others not to act.<sup>21</sup> No party favoring mandatory detariffing even bothers to deal with this crucial issue of what the statute actually allows the Commission to do.

Second, LDDS WorldCom and other commenters also demonstrate conclusively that mandatory forbearance is not required, or even permitted, under the new statute's three-part forbearance test.<sup>22</sup> Parties show in particular that adopting a mandatory detariffing policy would be against the public interest because consumers and carriers alike would be harmed,<sup>23</sup> without any concomitant benefit of increased competition.<sup>24</sup> In addition, the Notice's heavy reliance on the public interest benefits of the Commission's prior permissive forbearance policy to support its tentative public interest findings about mandatory forbearance is largely irrelevant because the two policies are so different from one another.<sup>25</sup>

Commenters highlight many significant costs of a mandatory forbearance policy which the Commission and supporting commenters do not even mention. First, as LDDS WorldCom also explains in its comments, so-called "casual callers" who utilize access codes, collect calling, and credit cards to reach the long distance carrier of his or her choice must, by

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<sup>21</sup> LDDS WorldCom Comments at 8-9; AT&T Comments at 10; Sprint at 3 n.1; GTE Comments at 5; Winstar Comments at 4.

<sup>22</sup> LDDS WorldCom Comments at 9-15; MCI Comments at 14-17; Cable & Wireless Comments at 6; British Telecom Comments at 4-6.

<sup>23</sup> LDDS WorldCom Comments at 9-11; MCI Comments at 14-15; MFS Comments at 5-8; Casual Calling Coalition Comments at 14-17

<sup>24</sup> MCI Comments at 15-19.

<sup>25</sup> See, e.g., MCI Comments at 7.

definition, rely exclusively on tariffs to govern the rates, terms, and conditions of service.<sup>26</sup> The Casual Calling Coalition states that carriers also need tariffs to establish legal and commercial relationships with casual and transient callers.<sup>27</sup> No party supporting mandatory detariffing suggests how to deal with this significant problem in the absence of tariffs.

Second, the practical problems of a mandatory detariffing policy are obvious. While it is absolutely impossible for a carrier to establish contractual relationships ahead of time with its casual caller customers, it is a virtual impossibility to attempt the same feat with each and every customer, especially residential and small business customers.<sup>28</sup> Liability costs will rise dramatically without a contract, and transactional costs will rise just as dramatically with contracts.<sup>29</sup> As Sprint explains in considerable detail, convenience would go down and charges would go up under mandatory detariffing.<sup>30</sup>

Third, commenters point to serious legal hardships that will be created for customers and carriers under a mandatory detariffing regime.<sup>31</sup> ACTA refers to the "legal void" that will be created when tariffs are no longer available to help define the legal relationship between a carrier and a customer.<sup>32</sup> In the absence of binding tariffs or contracts,

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<sup>26</sup> LDDS WorldCom Comments at 5-6, 10; AT&T Comments at 19-20.

<sup>27</sup> Casual Calling Coalition at 10-12.

<sup>28</sup> CFA Comments at 5.

<sup>29</sup> CSE Comments at 6.

<sup>30</sup> Sprint Comments at 13-16.

<sup>31</sup> ACTA Comments at 12; Winstar Comments at 4-6.

<sup>32</sup> ACTA Comments at 12.

carriers will face significant uncertainty over potential liability claims, while customers will face massive confusion.<sup>33</sup>

Fourth, without the ability to file tariffs, commenters point out that it will be far more difficult for carriers to enforce Commission policies. For example, one Commission rule prohibits the use of 800 numbers for pay-per-call services. Sprint states that enforcing this policy will be next to impossible without a well-crafted tariff on file with the Commission that prohibits such action.<sup>34</sup> One party sees toll fraud as another problem,<sup>35</sup> while another party claims that the FCC's rate averaging and price collusion policies can only be enforced through public pricing data.<sup>36</sup> Several commenters also point out that sole reliance on the Section 208 complaints process is untenable for both carriers and consumers in the absence of all tariffs.<sup>37</sup>

Finally, many parties decry the lack of public pricing information if no tariffs are allowed to be filed with the Commission. These parties observe that mandatory detariffing would make it that much harder for companies and consumers alike to review pricing data and understand what charges are applicable in any given situation.<sup>38</sup>

There are simply no public interest benefits of mandatory detariffing to weigh

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<sup>33</sup> ACTA Comments at 12.

<sup>34</sup> Sprint Comments at 16-19.

<sup>35</sup> Sprint Comments at 17.

<sup>36</sup> GSA Comments at 6-7.

<sup>37</sup> ACTA Comments at 10; TRA Comments at 20-22; Alabama PSC Comments at 4; GSA Comments at 5.

<sup>38</sup> See, e.g., Telecom Management Information Systems Comments at 6-8; American Telegram at 1-2; SDD Comments at 1-2; Audits Unlimited Comments at 1-2; Telesoft Corp. Comments at 1-2; Fone Saver Comments at 2-3.

against its significant costs.<sup>39</sup> One of the few reasons offered in the Notice, echoed by some commenters, for adopting a mandatory detariffing policy is to reduce or eliminate the possibility of "tacit price coordination" by the IXC's.<sup>40</sup> However, LDDS WorldCom and a number of other parties dispute the unsupported notion that there is any price collusion in the long distance market.<sup>41</sup> In fact, LCI states flatly that price collusion is impossible.<sup>42</sup> Moreover, to the extent that any collusion may exist -- which LDDS WorldCom does not concede -- the forced elimination of tariffs does not appear to have anything to do with the situation. For example, Ameritech observes that any relationship between tariffs and any tacit collusion that may exist is overstated.<sup>43</sup> The Rural Telephone Coalition concludes that it is "not clear that mere publication of rate changes provides any basis for illegal collusion."<sup>44</sup> Parties point out that mandatory detariffing will not prevent price collusion,<sup>45</sup> in large part because rate information is available from a wide range of other public and private sources besides tariffs,<sup>46</sup> including

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<sup>39</sup> Sprint Comments at 19-21.

<sup>40</sup> Notice at para. 34. See USTA Comments at 3; BellSouth Comments at 2; Bell Atlantic Comments at 2; Cato Institute Comments at 2; API Comments at 5.

<sup>41</sup> LDDS WorldCom Comments at 11-12; CompTel Comments at 11-14; AT&T Comments at 22-24; MCI Comments at 19-22; Sprint Comments at 21-22; Cable & Wireless Comments at 7; ACTA Comments at 15; Louisiana PSC Comments at 7.

<sup>42</sup> LCI Comments at 6-7.

<sup>43</sup> Ameritech Comments at 8.

<sup>44</sup> Rural Telephone Coalition Comments at 7.

<sup>45</sup> MCI Comments at 16-17.

<sup>46</sup> LDDS WorldCom Comments at 12; TRA Comments at 16-17; Frontier Comments at 4; GSA Comments at 4; Penn. PUC Comments at 8-9; Louisiana PSC Comments at 8; Tennessee PSC Comments at 4-5; Penn. OCA Comments at 4.

public advertising.<sup>47</sup> Other commenters argue that collusion potential exists both with and without tariffs,<sup>48</sup> and that a permissive detariffing policy would severely limit any successful collusion.<sup>49</sup> In fact, one state public service commission argues that discrimination and price coordination will be greater in the mandated absence of tariffs.<sup>50</sup> A common theme running through these comments is that the existence or nonexistence of price competition and collusive pricing in the long distance market should not legitimately drive the FCC's decisionmaking process concerning federal tariffs.<sup>51</sup>

GSA also notes correctly that tariffs per se are not even the source of the perceived problem that the Commission seeks to remedy. Rather, the collusion argument hinges on the advance notice period that may allow one carrier to respond to the rates or service offerings contained in another carrier's tariff filing.<sup>52</sup> This "problem," and the rationale for eliminating tariff filings, simply goes away when nondominant carriers are allowed to file tariffs on only one days notice. One party even suggests adopting a zero day notice period, in order to completely alleviate the Commission's stated concern about collusion.<sup>53</sup>

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<sup>47</sup> Frontier Comments at 4; PacTel Comments at 4.

<sup>48</sup> PacTel Comments at 10; Alabama PSC Comments at 3; Market Dynamics Comments at 22.

<sup>49</sup> CSE Comments at 5-6.

<sup>50</sup> Alabama PSC Comments at 2.

<sup>51</sup> See, e.g., CSE Comments at 3-4; CFA Comments at 7; Market Dynamics Comments at 21-22.

<sup>52</sup> GSA Comments at 4-5.

<sup>53</sup> Ohio CC Comments at 5.

A second reason mentioned by the Commission for its proposed adoption of a mandatory detariffing policy is the purported "burden" of filing tariffs, both for IXC's and for the FCC. Parties show that this problem is greatly overstated. Certainly from the carriers' perspective, the decision whether any burdens or costs of employing a tariff outweigh those of a contract should be left to each individual carrier to decide. From the perspective of the Commission, the burdens of tariff filings can be greatly reduced without forbidding tariffs altogether.<sup>54</sup> As one example, a party notes that the FCC's resources certainly will not be strained if the tariff receipt function were simply privatized.<sup>55</sup> Other procedural reforms could also lessen any administrative burden on the Commission. Moreover, under a permissive detariffing policy, fewer tariffs will be maintained, and fewer tariff transmittals will be filed. In addition, the FCC will not need to become involved in the tariff review process at all.<sup>56</sup> as MFS says, the Commission need only act as a central repository of tariff filings, without actually reviewing them.<sup>57</sup> However, the alternative suggested by the Commission -- requiring carriers to maintain price and service information at their premises -- should be rejected because it would be more regulatory and intrusive than the tariff filing process.<sup>58</sup>

A third and final reason mentioned by the Commission and some commenters for

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<sup>54</sup> LCI Comments at 4.

<sup>55</sup> CompTel Comments at 14.

<sup>56</sup> LDDS WorldCom Comments at 14; Cato Institute Comments at 2.

<sup>57</sup> MFS Comments at 9.

<sup>58</sup> CompTel Comments at 14-15; MCI Comments at 13.



a mandatory detariffing policy is to eliminate potential application of the "filed rate doctrine."<sup>59</sup> Both the Ad Hoc Telecommunications Users Committee and the Broadcast Networks point to this rationale as the primary, if not only, reason they support mandatory detariffing.<sup>60</sup> Yet, as LDDS WorldCom and several other commenters point out, a permissive detariffing policy will have the exact same effect. Once the mandatory nature of filing tariffs is removed by the Commission, the underlying basis for applying the filed rate doctrine would be eliminated.<sup>61</sup>

Even those parties who believe that permissive detariffing, or mandatory tariffing, will allow use of the filed rate doctrine indicate that the resulting risks are minimal.<sup>62</sup> Regardless of the tariffing policy in place, the Commission has authority to adopt procedures and substantive policies that could mitigate any potentially negative impact of the filed rate doctrine. For example, one commenter suggests that, as part of a permissive forbearance policy, the Commission simply require that contracts take precedence over tariffs.<sup>63</sup> The notice period could also be extended for any tariff filing that will supersede a contract,<sup>64</sup> or otherwise proposes a rate increase.<sup>65</sup> A "fresh look" could also be granted to any customer that is

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<sup>59</sup> Notice at para. 34.

<sup>60</sup> Ad Hoc Telecommunications Users Committee Comments at 4-9; Networks Comments at 4; see also API Comments at 6-9; GSA Comments at 8-9.

<sup>61</sup> LDDS WorldCom Comments at 12-13; AT&T Comments at 20-22; Cable & Wireless Comments at 7.

<sup>62</sup> CompTel Comments at 16-19; LCI at 8-9; GTE Comments at 8-10; Tennessee PSC Comments at 5.

<sup>63</sup> Ursus Comments at 7-8.

<sup>64</sup> PacTel Comments at 13; Networks Comments at 7-8.

<sup>65</sup> Missouri PSC Comments at 3.

affected by the filing of a tariff provision that changes the terms of an existing long-term contract.<sup>66</sup>

The Commission suggests that prohibiting carriers from filing tariffs is the most deregulatory action possible and will bring the long distance industry closer to services in an "unregulated environment."<sup>67</sup> However, as several commenters observe, permissive detariffing is decidedly less regulatory, and imposes fewer costs on carriers and consumers alike, than mandatory detariffing.<sup>68</sup> Carriers have much more flexibility under permissive detariffing than they would under mandatory detariffing.<sup>69</sup> In addition, commenters show how long distance services, which are subject to numerous Title II and FCC obligations and restrictions, are not at all like unregulated services.<sup>70</sup>

In place of the Commission's mandatory detariffing recommendation, parties suggest other alternatives. For example, ACTA and TRA prefer requiring tariff filings for all carriers with over 5 percent market share, and permissive detariffing for all others.<sup>71</sup> Frontier suggests mandating tariffing of only terms and conditions of service,<sup>72</sup> while American

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<sup>66</sup> TRA Comments at 33-35.

<sup>67</sup> Notice at para. 34.

<sup>68</sup> AT&T Comments at 15-24; GTE Comments at 7-8.

<sup>69</sup> Frontier Comments at 5; PacTel Comments at 5-8; GTE Comments at 7-8.

<sup>70</sup> Sprint Comments at 11-12; Cable & Wireless Comments at 6-7; Alaska Comments at 3.

<sup>71</sup> ACTA Comments at 14; TRA Comments at 18-19; see also Market Dynamics Comments at 20-23 (mandatory tariffing for carriers over a certain size).

<sup>72</sup> Frontier Comments at 6.

Telegram suggests mandatory tariffing of only rates.<sup>73</sup> TRAC suggests that, in lieu of mandatory tariff filings, carriers could choose to disclose prices, terms, and conditions of services,<sup>74</sup> while GSA suggests that carriers post their rates, terms, and conditions electronically, and be able to apply them as legal documents.<sup>75</sup> LDDS WorldCom contends that, ultimately, a blanket permissive detariffing policy for nondominant long distance carriers is superior to these suggestions because it will allow the competitive market, not regulation, determine the most efficient and equitable way to provide services to the public.

Should the Commission decide -- incorrectly -- to impose mandatory detariffing, LDDS WorldCom's comments urge the Commission to adopt a transitional phase-in period of at least 12 months to allow carriers and customers time to adjust to an environment devoid of tariffs.<sup>76</sup> Other commenters suggest a transitional period of 18 to 24 months.<sup>77</sup> LDDS WorldCom agrees that up to two years may be needed to shift to a mandatory detariffing regime.

Finally, LDDS WorldCom agrees with LCI that, should the Commission adopt a mandatory detariffing regime, AT&T should not be required to continue filing tariffs if other carriers are ordered not to file tariffs.<sup>78</sup> While the Commission may somehow view the tariff filing requirement as an onerous safeguard that must be imposed on a newly-nondominant

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<sup>73</sup> American Telegram Comments at 2-4.

<sup>74</sup> TRAC Comments at 3.

<sup>75</sup> GSA Comments at 11-15.

<sup>76</sup> LDDS WorldCom Comments at 14-15.

<sup>77</sup> LCI Comments at 4; Ad Hoc at 14.

<sup>78</sup> LCI Comments at 5.

AT&T, LDDS WorldCom would rather have the option to continue filing tariffs along with AT&T, rather than be ordered not to do so. AT&T's ability to file tariffs would actually give it a significant advantage over other IXC's in the market, for the reasons outlined above.

**C. Other Commenters Agree With LDDS WorldCom's Conclusion That, Regardless of The FCC's Other Decisions, The RBOCs Should Be Required To File Tariffs For Their Provision of Long Distance Services**

A few entities join two RBOCs in claiming that the RBOCs should be allowed into the long distance market on an untariffed basis.<sup>79</sup> US West even claims that "parity" is the single most important issue in this proceeding, and that all its long distance services should be classified as nondominant and not tariffed.<sup>80</sup>

As LDDS WorldCom and many other commenters explain, however, the RBOCs' long distance services must be tariffed, regardless of the Commission's other decisions in this proceeding.<sup>81</sup> The simple fact is that regulators need to monitor the RBOCs to ensure that they do not leverage their bottleneck control over local access and exchange markets into abusive behavior in the long distance market. The Commission also needs to scrutinize RBOC tariffs to make sure that the RBOCs are fully complying with all aspects of the 1996 Act.<sup>82</sup> US West is mistaken; the most important concept in this proceeding is not whether the RBOCs should be

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<sup>79</sup> NYNEX Comments at 3; BellSouth Comments at 18; Ad Hoc Corp. Tel. Managers Comments at 2; NADO et al at 6-7.

<sup>80</sup> US West Comments at 3.

<sup>81</sup> LDDS WorldCom Comments at 15-17; CompTel Comments at 19; LCI Comments at 10 n.9; ACTA Comments at 3; Casual Calling Coalition Comments at 16; Alabama PSC Comments at 5; Market Dynamics Comments at 21; SCG Comments at 3-4.

<sup>82</sup> LDDS WorldCom Comments at 15-16; SCG Comments at 3-4.

treated the same as other long distance service providers, but rather what Commission policies best meet the public interest.

Indeed, the support of Bell Atlantic and BellSouth for mandatory detariffing may be viewed as yet another attempt by the RBOCs to gain an unfair advantage in the long distance market. As the only local service provider for almost all consumers, the RBOCs will have no problem collecting long distance charges in the absence of a federal tariff. Their IXC competitors, however, will face major collection barriers without tariffs, which will raise those carriers' costs of doing business vis-a-vis the RBOCs.

Some commenters claim that expedited RBOC entry into the long distance market is needed to address its supposed oligopolistic market structure and anticompetitive pricing levels.<sup>83</sup> Bell Atlantic insists that requiring pervasive local competition prior to allowing the RBOCs to provide in-region interLATA services is a "charade" that forces long distance consumers "to continue paying monopoly prices."<sup>84</sup> BellSouth also discusses the "lack of true competition" and "cartel-like behavior" of the long distance carriers' "regime of tacit collusion," and refers to tariffs as "a governmentally-endorsed tool for managing an oligopolistic market through tacit collusion."<sup>85</sup>

Obviously this proceeding is hardly the place to discuss the RBOCs' all too

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<sup>83</sup> Ameritech Comments at 8-9; BellSouth Comments at 23-24; Bell Atlantic Comments at 2; NYNEX Comments at 3-5; PacTel Comments at 10; USTA Comments at 3; CSE Comments at 4-5.

<sup>84</sup> Bell Atlantic Comments at 3-4. Of course, the only thing "monopoly" about long distance rates is that portion attributable to exorbitant cost-multiplied access charges paid to the monopoly ILECs.

<sup>85</sup> BellSouth Comments at 3, 17, 22.

frequent (and ungrounded) flights of rhetorical fancy, or debate the relative merits (or lack thereof) of the RBOCs' future claims to be allowed into the in-region long distance market. However, the spectacle of monopolies trying to paint others in their own broad brush certainly is cause for wonder. As AT&T correctly points out, premature entry into the long distance market by the RBOCs would cause significant harm to consumers, and would result in lost price competition.<sup>86</sup> One state public service commission predicts that the potential for tacit pricing coordination and price discrimination may in fact be greater when the RBOCs are allowed into the long distance market.<sup>87</sup> The RBOCs' never-ending wish list in denial of market reality should have no bearing on the Commission's public interest policy choices in this proceeding.

### **III. A SIZABLE MAJORITY OF COMMENTERS SUPPORTS ALLOWING NONDOMINANT INTEREXCHANGE CARRIERS TO BUNDLE THEIR SERVICES WITH CUSTOMER PREMISES EQUIPMENT, PROVIDED THAT LONG DISTANCE SERVICES ARE OFFERED ON AN UNBUNDLED BASIS**

Most commenters support the Commission's tentative conclusion to allow nondominant carriers to bundle their long distance services with customer premises equipment.<sup>88</sup> Those comments recognize that the antibundling rule is no longer necessary given the highly competitive nature of both the long distance market and the CPE industry. Several

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<sup>86</sup> AT&T Comments at 24-25.

<sup>87</sup> Alabama PSC Comments at 9.

<sup>88</sup> AT&T Comments at 26-28; MCI Comments at 24; Sprint Comments at 26-29; TRA Comments at 40-42; Frontier Comments at 7-8; GCI Comments at 5-6; Bell Atlantic Comments at 5-6; NYNEX Comments at 6-7; Pactel Comments at 11; SBC Comments at 7-8; US West Comments at 8-9; GTE Comments at 10-11; USTA Comments at 3-4; Penn. PUC Comments at 12; Louisiana PSC Comments at 10-11; Florida PSC Comments at 18-19; Ohio CC Comments at 8-9; Ad Hoc Telecommunications Users Committee Comments at 12; Cato Institute Comments at 4; API Comments at 11-17.

other parties object to ending the bundling prohibition.<sup>89</sup>

While LDDS WorldCom does not oppose the Commission's recommended action, several measures should be taken to ensure that consumers are protected from any potential anticompetitive actions in the market. First, most commenters agree that the Commission should retain a requirement that carriers offer separately, as an unbundled service, the service that is being bundled together with the CPE.<sup>90</sup> Second, as several parties mention, public disclosure of the common carrier interfaces should be required to prevent the development of proprietary common carrier transmission systems.<sup>91</sup> Third, LDDS WorldCom agrees with the Pennsylvania PUC that a short transition period would be appropriate to allow time for the market to adjust to the new bundling regime.<sup>92</sup>

Ironically, most of the RBOCs, GTE, and USTA, which otherwise lambast the purported lack of competition in the long distance market, apparently see enough of it to favor eliminating the bundling prohibition.<sup>93</sup> Not surprisingly, Bell Atlantic and SBC both argue that

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<sup>89</sup> IDCMA Comments at 1-41; ITAA Comments at 3-6; Consumer Electronics Retailers Coalition Comments at 2-3; ACTA Comments at 16; Alabama PSC Comments at 10-11.

<sup>90</sup> LDDS WorldCom Comments at 18-19; TRA Comments at 40-42; GCI Comments at 5-6; NYNEX Comments at 7; PacTel Comments at 11; US West Comments at 9; GTE Comments at 10-11; USTA Comments at 3-4; Penn. PUC Comments at 12; Louisiana PSC Comments at 10-11; Tennessee Comments at 5-6; Ohio CC Comments at 8-9; Ad Hoc Comments at 13; Florida PSC Comments at 19; Consumer Electronics Retailers Coalition Comments at 12-13.

<sup>91</sup> US West Comments at 8-9; Ad Hoc Telecommunications Users Committee Comments at 13.

<sup>92</sup> Penn. PUC Comments at 13.

<sup>93</sup> Bell Atlantic Comments at 5-6; NYNEX Comments at 6-7; Pactel Comments at 11; SBC Comments at 7-8; US West Comments at 8-9; GTE Comments at 10-11; USTA Comments at 3-4.

the dominant LECs should also be allowed to bundle their local and long distance services with CPE,<sup>94</sup> while NYNEX supports allowing the RBOCs to bundle their long distance services and CPE.<sup>95</sup> MCI counters correctly that, because the RBOCs possess market power in the local market, any authority to bundle telecommunications services and CPE should not include the dominant RBOCs.<sup>96</sup> Compaq also opposes lifting the prohibition for the in-region interLATA services that the RBOCs will provide.<sup>97</sup> LDDS WorldCom agrees with both observations.

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<sup>94</sup> Bell Atlantic Comments at 5-6; SBC Comments at 7-8.

<sup>95</sup> NYNEX Comments at 6-7.

<sup>96</sup> MCI Comments at 26-27.

<sup>97</sup> Compaq Comments at 4.



#### IV. CONCLUSION

The Commission should act in accordance with the recommendations proposed above and in LDDS WorldCom's initial comments in this proceeding.

Respectfully submitted,



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